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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 671

CENTRAL-STATES CORPORATION, *Petitioner*

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons For Granting Writ	8
I. The Court of Appeals Has Decided An Important Question of State Law In a Way In Conflict With State Law and With the Decisions of This Court	8
A. The Court of Appeals Has Disregarded The Uniform Warehouse Receipts Act (G. S., 1949, Secs. 82-101 to 82-160) And The Pertinent Decisions Thereunder	8
B. Regardless of The Uniform Warehouse Receipts Act The Decision of The Court of Appeals Is In Conflict With The Kansas Grain Warehousing Act (G. S., 1949, Chap. 34)	15
II. The Court of Appeals Has Departed From The Accepted and Usual Course of Judicial Proceedings By Making Findings of Fact Having No Foundation In The Present Record and At Variance With Its Finding In a Prior Related Case	20
III. Whether Negotiable Warehouse Receipts Are Subject to Extraneous Defenses Is a Question Vital To The Conduct of Business	23
Conclusion	26
Appendix A: Kansas General Statutes, 1949, Sections 34-223, 34-229, 34-238, 34-239, 34-240, 34-244, 34-246, 34-248, 34-250, 34-290, 34-291, 82-120, 82-157, 82-158	1a
Appendix B: Opinion and Judgment of the Court of Appeals for The Tenth Circuit	8a

TABLE OF CASES Page

Central-States Corp. v. Luther, 215 F. (2d) 38 (C.A. 10, 1954), cert. den. 348 U.S. 951, 99 L. Ed. 743, 75 S. Ct. 438 ..... 7, 8, 15, 20, 21

Commercial National Bank of New Orleans v. Canal-Louisiana Bank and Trust Co., 239 U.S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916) 8, 13, 23

F. H. Peavey & Co. v. First National Bank, 140 F. (2d) 815 (C.A. 8, 1944) 14

Fidelity State Bank v. Central Surety & Ins. Corp., 228 F. (2d) 654 (C.A. 10, 1955) 8, 15, 22

First National Bank in Wichita v. Luther, 217 F. (2d) 262 (C.A. 10, 1954) 7

Goodwyn v. Union Springs Guano Co., 228 Ala. 173, 153 So. 246 (1934) 10

Heffron v. Bank of America, 113 F. (2d) 239 (C.A. 9, 1940) 14, 24

Inter-State National Bank of Kansas City v. Luther, 221 F. (2d) 382 (C.A. 10, 1955), cert. granted 350 U.S. 810, 100 L. Ed. 51, 76 S. Ct. 77, dismissed 350 U.S. 944, 100 L. Ed. 188, 76 S. Ct. 297 7

Luther v. U.S., 225 F. (2d) 495 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 220, 76 S. Ct. 321 7

Maryland Casualty Co. v. Washington Loan & Banking Co., 167 Ga. 354, 145 S.E. 761 (1928) 11

National Exchange Bank of Hartford v. Wilder, 34 Minn. 149, 24 N.W. 699 (1885) 13

Newhall, et al., v. Central Pacific Railway Co., 51 Cal. 345 (1876) 23, 24

Peoples Warehouse Co. v. Commercial Bank & Trust Co., 74 Ga. App. 67, 38 S.E. (2d) 855 (1946) 14, 24

Sampsell v. Lawrence Warehouse Co., 167 F. (2d) 885 (C.A. 9, 1948) 10, 14

U. S. v. Luther, 225 F. (2d) 499 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 200, 76 S. Ct. 321 7

Vallee v. Imex Warehouse Co., 9 La. App. 703, 118 So. 900 (1928) 12

Weil Bros., Inc. v. Keenan, 180 Miss. 697, 178 So. 90 (1938) 13, 25

Page

STATUTES CITED

28 U.S.C. Sections:
1254(1) 2
1335 3
1397 3
2361 3

Kansas General Statutes, 1949, Sections:
34-223 ..... 2, 13, 1a
34-229 ..... 2, 6, 19, 1a
34-238 ..... 2, 17, 2a
34-239 ..... 2, 17, 3a
34-240 ..... 2, 6, 4a
34-244 ..... 2, 16, 17, 4a
34-246 ..... 2, 18, 4a
34-248 ..... 2, 18, 4a
34-250 ..... 2, 13, 16, 5a
34-290 ..... 2, 18, 6a
34-291 ..... 2, 18, 6a
82-120 ..... 2, 10, 13, 14, 6a
82-157 ..... 2, 9, 7a
82-158 ..... 2, 13, 7a

Uniform Warehouse Receipts Act, Sections:
20 ..... 10, 13, 14
57 9
58 13

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v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CENTRAL-STATES CORPORATION, an Illinois corporation, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit entered on October 6, 1956.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 237 F.(2d) 875, and is set forth in full in Appendix B to this petition, *infra*, p. 8a. That opinion affirmed a summary judgment entered, without opinion, by the District Court, which judgment is contained in the certified Transcript of Record filed with this petition.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit affirming the judgment of the United States District Court for the District of Kansas was dated and entered on October 6, 1956. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether the surety on a statutory warehouseman's bond is liable to a holder and purchaser in good faith of negotiable warehouse receipts printed by the authorized state officials in the prescribed statutory form but issued for non-existent goods.

2. Whether in a state which has enacted the Uniform Warehouse Receipts Act that legislation may be treated as a mere offshoot of the local law or entirely disregarded.

3. Whether in the absence of a pertinent decision by the courts of the state in which the controversy arises, a Court of Appeals, in construing the local statutes applicable to negotiable warehouse receipts and, in particular, the Uniform Warehouse Receipts Act, may properly decide the question presented in a manner in conflict with all pertinent decisions on the subject by the courts of other states.

STATUTES INVOLVED

The pertinent statutory provisions of the General Statutes of Kansas, 1949 (hereinafter sometimes referred to as "G.S., 1949"), are Sections 34-223, 34-229, 34-238, 34-239, 34-240, 34-244, 34-246, 34-248, 34-250, 34-290, 34-291, 82-120, 82-157 and 82-158. These have been printed in Appendix A to this petition, *infra*, p. 1a *et seq.*

STATEMENT OF THE CASE

This is an action in the nature of an interpleader brought by the respondent, TRINITY UNIVERSAL INSURANCE COMPANY, under Sections 1335, 1397 and 2361 of Title 28 of the United States Code, against a number of creditors of GARDEN GRAIN & SEED COMPANY, INC., including the petitioner, CENTRAL-STATES CORPORATION. The purpose of this suit is to obtain a determination of the liability of the respondent under a certain bond executed by it covering the faithful performance of the duties of the said GARDEN GRAIN & SEED COMPANY, INC., as a public warehouseman licensed under the provisions of Chapter 34 of the General Statutes of Kansas, 1949. The petition to this Court is for a writ of certiorari to review the judgment of the Court of Appeals affirming an order of the United States District Court for the District of Kansas allowing a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in favor of the respondent and against the petitioner.

The petitioner is engaged in the business of distilling spiritous liquors and for that purpose purchases large quantities of milo and other grains. Prior to the transactions here in question the petitioner purchased substantial quantities of milo from GARDEN GRAIN & SEED COMPANY, INC. In each instance the petitioner paid in full for the amount of the purchase and received from GARDEN GRAIN & SEED COMPANY, INC., an invoice for the grain sold and negotiable uniform unregistered bailment local public warehouse receipts, evidencing the said grain (R. 27, 46, 51-57). The following receipt is typical of those delivered to the petitioner differing from some of the others only with respect to date and amount (R. 27):

"GARDEN GRAIN & SEED COMPANY ELEVATOR

Pierceville, Kansas

ORIGINAL NEGOTIABLE No. 136

Date	Grade or Test	Net Weight
11-14-51	2 yel. milo	280,000
	Bushels 5,000	
Milo	2	54
Kind of Grain	Grade (Agreed Grade)	Test

LICENSED AND BONDED UNDER THE KANSAS WAREHOUSE LAWS

LOCAL PUBLIC WAREHOUSE RECEIPT

Received in store on 11-14-51 from Central States Corporation of Omaha Nebraska.

Five thousand & no/100.....

Bushels of Milo subject to the order of Central States Corp. and the surrender of this receipt and the payment of all charges.

The undersigned warehouseman is not the owner of the grain covered by this receipt, either solely, jointly or in common with others. It is hereby agreed that the grain herein described has been graded as provided by law and may be stored with other grain of the same grade. This grain is fully covered by fire, lightning, tornado and internal explosion insurance. The storage insurance, elevation and other charges on said grain is to be according to our advertised tariffs, from date of receipt of grain in store, until sold or delivered to the above-named depositor or his order.

Uniform Unregistered Bailment Local Public Warehouse Receipt"

In each instance GARDEN GRAIN & SEED COMPANY, INC., used the monies paid by the petitioner to purchase milo. In each instance the milo so purchased was deposited in the warehouses of GARDEN GRAIN & SEED COMPANY, INC. In each instance the said deposit was purported to be made for and on behalf of CENTRAL-STATES CORPORATION. In each instance the warehouse receipts issued to the petitioner recited that the grain so deposited had been "Received in store . . . from Central States Corporation". As the petitioner re-

quired grain for its distilling operations, it would draw upon the deposits of milo evidenced by these receipts and would surrender a sufficient number of them to cover the grain withdrawn. *Storage charges were paid by the petitioner on all grain not withdrawn by it* (R. 46). There is no question that the petitioner believed that milo had been deposited for and on its behalf by GARDEN GRAIN & SEED COMPANY, INC., and that the petitioner at all times in its transactions with GARDEN GRAIN & SEED COMPANY, INC., acted in good faith and without knowledge of any dereliction on the part of GARDEN GRAIN & SEED COMPANY, INC. (R. 46).

On January 16, 1952, GARDEN GRAIN & SEED COMPANY, INC., was adjudicated a bankrupt (R. 34). At that time it was learned that it did not have sufficient grain on hand to cover all of the receipts issued by it (R. 35). The receipts here in question were acquired by the petitioner from GARDEN GRAIN & SEED COMPANY, INC., on November 14, 1951, November 29, 1951, and December 15, 1951, and evidenced respectively 5,600,000 pounds, 2,800,000 pounds, and 2,800,000 pounds of milo for which the appellant paid respectively $127,680.00, $65,800.00, and $68,800.00 (R. 22-23).[1]

All of the warehouse receipts issued to the petitioner were on official forms prescribed and printed by the state of Kansas (R. 60). Each of the said receipts, bearing the caption, "Uniform Unregistered Bailment Local Public Warehouse Receipt," was issued with the

[1] The Court of Appeals, in its opinion, inadvertently omitted a specific reference to the Nov. 14, 1951 acquisition but obviously considered that acquisition (as evidenced by the Court's reference to petitioner's allegation that the amount paid to the warehouseman, after credit for milo received by petitioner, is $220,875.71).

express authority of the chief grain inspector for the state of Kansas, who was then Mr. A. P. Emrie (R. 61). Each of the said warehouse receipts was prepared in triplicate. The original was issued to the petitioner, one copy was retained by GARDEN GRAIN & SEED COMPANY, INC., and the second copy was delivered to the chief grain inspector for the state of Kansas (R. 60). GARDEN GRAIN & SEED COMPANY, INC., was not authorized to issue *registered* receipts (R. 61). See G. S., 1949, Sec. 34-240. It is not the practice in the state of Kansas to issue depositors' receipts at the time the grain is delivered to the warehouseman. Such receipts are issued some time subsequent to such delivery (R. 59).

The respondent is the surety under a statutory public warehouseman's bond in the principal sum of $130,000.00 issued under G. S., 1949, Sec. 34-229, "for the benefit of all persons interested, or their legal representatives, attorneys, or assigns . . ." (R. 7-18). This section provides as follows:

> "Warehouseman bond. Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for

licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000; *Provided*, That whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial condition, it shall be his duty to require a substituted or additional bond as he shall deem necessary."

The said bond was in effect at the time of the transactions between the petitioner and GARDEN GRAIN & SEED COMPANY, INC.

The instant case involves the sixth appeal arising directly or indirectly out of the bankruptcy of GARDEN GRAIN & SEED COMPANY, INC. See *Central-States Corp.* v. *Luther*, 215 F. (2d) 38 (C.A. 10, 1954), cert. den. 348 U.S. 951, 99 L. Ed. 743, 75 S. Ct. 438; *Inter-State National Bank of Kansas City* v. *Luther*, 221 F. (2d) 382 (C.A. 10, 1955), cert. granted, 350 U.S. 810, 100 L. Ed. 51, 76 S. Ct. 77, dismissed, 350 U.S. 944, 100 L. Ed. 188, 76 S. Ct. 297; *First National Bank in Wichita* v. *Luther*, 217 F. (2d) 262 (C.A. 10, 1954); *United States* v. *Luther*, 225 F. 2d 499 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 200, 76 S. Ct. 321; *Luther*

v. *United States,* 225 F. (2d) 495 (C.A. 10, 1955), cert. den. 350 U.S. 497, 100 L. Ed. 220, 76 S. Ct. 321; *Fidelity State Bank* v. *Central Surety & Ins. Corp.,* 228 F. (2d) 654 (C.A. 10, 1955). The first two of these decisions were decided by a divided court, the first by a 2 to 1 vote, the second by a 3 to 2 vote. In the first case certiorari was denied but in the second, which raised much the same point, certiorari was granted. No hearing, however, was ever held before this Honorable Court because the issues in controversy were promptly settled after the issuance of the writ.

In the instant cause the Court of Appeals for the Tenth Circuit has denied the right of the petitioner to recover on its warehouse receipts for reasons which represent an extension of the rationale employed in the earlier cases cited above. In arriving at its conclusion herein, the Court of Appeals made certain findings of fact which have no foundation whatsoever in the record and which are completely at variance with its own previous findings in *Central-States Corp.* v. *Luther, supra.* This is a subject which is more fully treated in Part II of the reasons for granting the writ set forth below.

REASONS FOR GRANTING WRIT

I

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF STATE LAW IN A WAY IN CONFLICT WITH APPLICABLE STATE LAW AND WITH THE DECISIONS OF THIS COURT.

A. The Court of Appeals Has Disregarded the Uniform Warehouse Receipts Act (G.S., 1949, Secs. 82-101 to 82-160) and the Pertinent Decisions Thereunder

In *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust,* 239 U.S. 520, 60

L. Ed. 417, 36 S. Ct. 194 (1916), this Honorable Court said:

> "It is apparent that if these uniform acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the uniform warehouse receipts act expressly provides (§ 57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficent object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an offshoot of local law. *The cardinal principle of the act—which has been adopted in many states—is to give effect, within the limits stated, to the mercantile view of documents of title . . .*" (Italics supplied).

In the instant cause the Court of Appeals has ignored the quoted admonition. It has not only based its decision upon a hypertechnical construction of local law, but it has completely disregarded the Uniform Warehouse Receipts Act, which has been adopted by Kansas and is found in G. S., 1949, Sections 82-101 to 82-160.[2] Nowhere in the decision of the Court of Appeals is any mention of the Act to be found. This action by the Court of Appeals clearly subverts the intent of the Kansas legislature in enacting the Uni-

[2] Section 57 of the Act, quoted in the aforementioned case, is G. S., 1949, Sec. 82-157.

form Warehouse Receipts Act. What was said in *Sampsell* v. *Lawrence Warehouse Co.*, 167 F. (2d) 885 (C.A. 9, 1948), in passing upon a question arising under that Act in California, applies here with equal force:

> "It is apparent that the intent of the California legislature in providing that the act is to be interpreted to make uniform the law of the states which enacted it, is defeated if in California this warehouse receipt be held invalid."

The pertinent portion of the Act is Section 20, to which G. S., 1949, Section 82-120, corresponds. It reads, in part, as follows:

> "A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue."

As noted below three states have construed Section 20 as authorizing recovery by a holder of negotiable warehouse receipts against the warehouseman's surety because of the issuance of negotiable receipts for nonexistent goods. No decision on the point has ever been rendered by the courts of the State of Kansas.

In *Goodwyn* v. *Union Springs Guano Co.*, 228 Ala. 173, 153 So. 246 (1934), the Supreme Court of Alabama said:

> "Under the facts in this case this statute [sec. 20 of the Uniform Warehouse Receipts Act] precludes the warehouseman, Graham, from asserting as a defense the nonexistence of the cotton. As before stated, some of the receipts were issued by him to third persons, and all were delivered by Graham to the plaintiff as representing cotton

covered by the mortgages held by plaintiff against Graham and his tenants; and in the absence of evidence going to show that through the connivance and collusion of Graham and the plaintiff, with the fraudulent intent to mulct the surety, the surety standing in the shoes of the principal is in no better position than the principal, and cannot assert the defense of the nonexistence of the cotton."

Similarly in *Maryland Casualty Co.* v. *Washington Loan & Banking Co.*, 167 Ga. 354, 145 S.E. 761 (1928), the Supreme Court of Georgia held:

"... There was no evidence tending to show that the bank knew of such irregularity, and no circumstances were proven which would put the bank on inquiry as to the actual storage of the cotton in the warehouse of the company.

* * * *

" . ... Where warehouse receipts are issued in due course of business for the express purpose of being pledged as security to obtain money, and if the warehouseman in such receipts recites that it owns and has in storage the cotton for which the receipts are issued, the bank, as pledgee of the receipts, after having advanced money in good faith on them, is entitled to stand on the terms of the pledged receipts as importing a genuine business transaction of the nature described in the receipts.

* * * *

"An obligation rests upon a warehouse company not to issue receipts for goods in which it recites that it owns such goods, and that it will deliver the same to the holder of such receipts, when in fact such goods are not in existence or are not stored with it. *The purpose of the bond is to protect persons dealing with the warehouseman, in the usual and customary method of business, and against fraudulent and unlawful acts*

of the warehouseman in issuing receipts for goods in which it recites their storage, when the recital is false. For a breach of this obligation the surety upon its bond becomes liable to the pledgee of the receipts for the falsity of such statement." (Italics supplied)

And similarly in *Vallee* v. *Imex Warehouse Co.*, 9 La. App. 703, 118 So. 900 (1928), the Appellate Court of Louisiana ruled as follows:

"The burden was on the surety company, which had guaranteed the faithful performance by the warehouse company of the contract, to prove lawful excuse (see section 8 paragraph [c]) for failure to deliver, and before it could make such proof it was necessary to allege it. As issuance of receipt by a warehouseman knowing that the goods have not been received by him is made a crime by section 50 of the act, the failure to deliver for that reason is not a lawful excuse, unless allegation is made and proved that the holder was a **party to the fraud.**

* * * *

"To permit the surety company to attack the validity of the principal's contract of bailment without any allegation of guilty knowledge necessarily implying bad faith on the part of plaintiff would largely destroy the usefulness of the Negotiable Warehouse Receipt, and would necessarily clog the wheels of commerce to which this symbol of credit daily becomes more and more essential." (Italics supplied)

This last decision is especially significant because *the receipts there considered contained a recital, as do the receipts in the instant cause, that certain goods had been received in store from the plaintiff who, in fact, had made no physical deposit.* The Court of

Appeals was of the opinion that the warehouse receipts here in question could be valid only if the holder thereof had itself made a physical deposit of grain in a warehouse. Since at least the 1890's, however, the requirement of a physical deposit has been discarded by most courts as obsolete and unrealistic. See *National Exchange Bank of Hartford* v. *Wilder*, 34 Minn. 149, 24 N.W. 699 (1885).

But what is even more significant in the instant cause is that Section 20 of the Act (G.S., 1949, Sec. 82-120), grants the right to recover not to a *depositor* of grain but to the *holder* of a negotiable warehouse receipt, and "holder" is defined in Section 58 (G.S., 1949, Sec. 82-158) not as a holder in due course but merely as "a person who has both actual possession of such receipt and a right of property therein." This fact obviates the necessity for considering whether or not the petitioner was or was not a depositor of grain. As will be seen in Part I.B., below, the same is true under the local grain warehouseman's act (G.S., 1949, Secs. 34-223, 34-250) regardless of section 20 of the Uniform Warehouse Receipts Act.

The policy underlying the decision of this court in *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust Co., supra,* and in the other cases cited above has been enunciated in the following additional decisions:

> "A primary purpose of the Uniform Warehouse Receipts Act is to make the standard receipts issued by warehousemen for chattels documents of title so that people who honestly purchase these documents for value will be protected by the terms of the Act as purchasers in good faith." *Weil Bros., Inc.* v. *Keenan,* 180 Miss. 697, 178 So. 90 (1938).

"Indeed, the general scheme of the Warehouse Receipts Act to achieve uniformity, and to effect the secure and ready use of warehouse receipts as instruments of credit, is inconsistent with the notion that the business world must look to something other than the observance of the definite and comprehensive terms of the act itself." *Heffron v. Bank of America,* 113 F.(2d) 239 (C.A. 9, 1940). Quoted in *Sampsell* v. *Lawrence Warehouse Co., supra.*

"The plaintiff had the right to presume that the law had been complied with and when the plaintiff brought the uncanceled receipts in good faith, it had not, under the allegations of the petition, failed to exercise due care." *Peoples Warehouse Co.* v. *Commercial Bank and Trust Co.,* 74 Ga. App. 67, 38 S.E. (2d) 855 (1946).

"The rule in North Dakota is that 'nothing but clear evidence of knowledge or the notice of fraud or mala fides can impeach the prima facie title of a holder of a negotiable paper taken before maturity' . . . . None of the irregularities on the face of the receipt indicate as a matter of law any difficulty in Hauser's title, any fraud in the inception of the receipt, or that there existed any defense to its enforcement." *F. H. Peavey & Co.* v. *First National Bank,* 140 F.(2d) 815 (C.A. 8, 1944).

Neither Section 20 (G.S., 1949, Sec. 82-120) nor any of the decisions cited above are even mentioned in the opinion of the Court of Appeals. That opinion is predicated entirely upon the fact that each of the warehouse receipts here in question recited that certain quantities of grain were "received in store" from the petitioner and that the petitioner did not itself physically deposit grain. The following uncontradicted facts are established by the record:

1. The petitioner paid full value for all of the warehouse receipts held by it (R. 22-24).

2. The warehouseman used the moneys paid by the petitioner to purchase milo (R. 46).

3. The milo so purchased was deposited in the warehouses of the warehouseman (R. 46).

4. The deposit in each case was made for and on behalf of the petitioner (R. 46).

5. Storage charges were paid by the petitioner on all grain representing the said warehouse receipts (R. 46).

6. All of the warehouse receipts were on official forms prescribed and printed by the State of Kansas (R. 47).

7. Each of the said receipts bearing the caption, "Uniform Unregistered Bailment Local Public Warehouse Receipts" was issued with the express authority of the chief grain inspector of the state of Kansas (R. 47).

Despite these facts the Court of Appeals held that the petitioner was itself responsible for its loss and that the surety was exonerated from liability on a warehouseman's bond issued "for the benefit of all persons interested" because the warehouseman was guilty of a wrongful act!

B. Regardless of the Uniform Warehouse Receipts Act, the Decision of the Court of Appeals is in Conflict With the Kansas Grain Warehousing Act (G.S., 1949, Chap. 34)

In its prior opinions in *Central-States Corp.* v. *Luther, supra,* and *Fidelity State Bank* v. *Central Surety and Ins. Corp., supra,* the Court of Appeals has

placed the entire emphasis on the obligations imposed by the Kansas Grain Warehousing Act (G.S., 1949, Chap. 34) upon *depositors* of grain. No reference is made by the Court of Appeals, however, to the rights granted by that act to the *holders* of warehouse receipts. G.S., 1949, Section 34-250, provides as follows:

> "A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the grain upon a demand made either by the *holder* of a receipt for the grain, *or* by the *depositor,* if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the grain is delivered, an acknowledgment that it has been delivered, if such acknowledgment is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the grain in compliance with the demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal." (Italics supplied)

It will be noted from an examination of this language that rights are granted to a holder of a receipt as well as to a depositor of grain. The petitioner certainly falls within the former category. Other provisions of Chapter 34, moreover, indicate that the legislature of Kansas was just as desirous of protecting the interest of a holder as were the authors of the Uniform Warehouse Receipts Act. Thus Section 34-244 provides that:

> "A receipt in which it is stated that the grain received will be delivered to the bearer, or to the order of any person named in such receipt, is a

> negotiable receipt. No provision shall be inserted in a negotiable receipt that will make it non-negotiable. Such provisions, if inserted, shall be void."

The instant receipts comply with all of the requirements of form prescribed by Section 34-239 but, in addition, contain the words previously quoted: "received in store from." This last phrase, according to the Court of Appeals, invalidates all of the receipts because no grain was physically received from the petitioner. However, it is respectfully submitted that this holding runs counter to the language of Section 34-244 quoted above.

Section 34-238 provides, among other things, that:

> "Warehouse receipts may be issued by any licensed public warehouseman as herein defined and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act . . ."

All of the receipts herein issued were on a form prescribed by the chief grain inspector and were all printed by the state printer in pursuance of the authority of the chief inspector. The fact that these receipts had such governmental sanction and approval would seem to warrant every effort being bent toward their validation. The ruling of the Court of Appeals, however, has had a precisely contrary result.

Section 34-248 provides that all receipts shall be registered, but "That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others . . ." All of the receipts here in question were unregistered receipts of the type authorized by the language quoted. The Court of Appeals has held, however, that the receipts in question should have been registered because they were issued for the warehouseman's own grain and not for grain owned by the petitioner. *The uncontradicted evidence, however, is that the grain in question was purchased with money provided by the petitioner for the petitioner's account and for deposit in the petitioner's name in the warehouses of the warehouseman. Furthermore, at no time prior to the warehouseman's bankruptcy did the petitioner know that the grain reresented by the receipts had not in fact been deposited* (*R. 46*).

Section 34-246 provides that "no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued." Section 34-290 provides that a warehouseman who issues a receipt for grain not actually received by him shall be guilty of a crime. Section 34-291 provides that a warehouseman who knowingly issues a receipt containing false statements shall be guilty of a crime. If the purchaser and holder of receipts is bound to know the law, he certainly, it is respectfully submitted, had the right to rely upon these statutory provisions in determining whether or not the receipts acquired by him were valid. All of these provisions were enacted to protect a holder of ware-

house receipts. At any rate they were not enacted to penalize the holder, and yet this is precisely the conclusion reached by the Court of Appeals below.

Section 34-229 prescribes the nature of the bond which every public warehouseman must post prior to commencing business. The bond in question complies with the statutory condition that it be "in favor of the state of Kansas for the benefit of all persons interested" and clearly falls within the purview of the statute. The decision of the Court of Appeals nullifies the statutory intent by completely overlooking the wrongful acts of the warehouseman and by denying recovery to the petitioner as a holder on the ground that it should have known that no grain was deposited to its account. The record, however, is clear that the receipts were purchased by the petitioner in good faith and without any knowledge that the warehouseman had not, in fact, deposited grain in petitioner's name and to its credit. The Court of Appeals' decision, therefore, completely relieves the surety from liability for the warehouseman's fraud perpetrated against a completely innocent party. This clearly undermines the legislature's intent (expressed by enactment of Section 34-229) to give protection to the innocent by provision for a surety for the warehouseman's faithful performance of his duties. In effect, the decision makes that bonding provision largely meaningless. Certainly this is a case of naked error.

II

THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY MAKING FINDINGS OF FACT HAVING NO FOUNDATION IN THE PRESENT RECORD AND AT VARIANCE WITH ITS OWN FINDINGS IN A PRIOR RELATED CASE.

In the opinion below the Court of Appeals stated:

> "The Seed Company [the warehouseman] did not have milo in storage for which it issued receipts to Central [the petitioner] and after it received the money from Central it did not thereafter purchase milo and place it in the warehouse of Central to the credit of Central."

This is an absolutely amazing finding. No evidence was adduced below to support this finding. The only factual matter before the Court is contained in the pleadings filed by the parties. One of these pleadings was an affidavit of defense filed on behalf of the petitioner (R. 45-49). This pleading specifically alleges that the petitioner paid certain moneys to the warehouseman for grain, that these moneys were used to purchase grain, and that the grain so purchased was deposited in the warehouses of the warehouseman to the account of the petitioner (R. 46). No evidence was adduced to deny or controvert this allegation. Nevertheless, the Court of Appeals found that the converse of the allegation was true. This, of course, was not only a clearly erroneous application of the judicial process, but constitutes an even more serious violation of the petitioner's rights when considered in conjunction with the same court's findings in the prior case of *Central-States Corp.* v. *Luther, supra,* in which testimony and evidence were adduced. The issue there was primarily whether or not the present petitioner had traced its moneys into a certain special

fund held by the Trustee in Bankruptcy. The Court of Appeals said (at p. 44):

> "At the time of the first transaction between the claimant and the bankrupt, the bankrupt was insolvent; its liabilities on warehouse receipts and storage tickets issued for milo exceeded the amount of milo which it then had in storage; and it had in its bank account a balance of only $435.13. At the time of the second transaction, the bankrupt was insolvent; was short in its milo account; and the balance in its bank account was only $115.06. And at the time of the third and last transaction between the parties, the bankrupt was still insolvent; was still short in its milo account; and the balance in its bank account was $15,480.42. The three sums which the claimant paid to the bankrupt were promptly deposited in the bank account of the bankrupt and they augmented such account by the respective amounts thereof. And immediately after the making of each deposit, the bankrupt spent large sums of money for milo . . ."

The fact of the matter was that all of the moneys paid to the warehouseman by the petitioner for the warehouse receipts in question was used to purchase milo which was deposited in the warehouses of the warehouseman. That the petitioner believed this to be the case is evidenced by its payment of storage charges for the grain evidenced by the warehouse receipts (R. 46).

The Court of Appeals makes the further unfounded assertion in the opinion below that "the Seed Company issued unregistered receipts to Central for grain which it did not actually have in storage; and Central knew those facts at the time it received the receipts and honored the sight drafts." The affidavit of

defense filed below alleges "that at no time was [the petitioner] aware that milo had not been deposited for and on its behalf by [warehouseman] in the amounts specified in the said warehouse receipts; that in all its transactions with [the warehouseman] [the petitioner] acted in good faith and without knowledge of any dereliction on the part of [the warehouseman]" (R. 46). No evidence to the contrary appears in the record. Moreover, the Court's finding of express knowledge on the part of the petitioner is contradicted by the further finding in the conclusion of the Court's opinion that the petitioner "was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse."

Toward the end of its opinion the Court of Appeals quotes as follows from its prior related decision in *Fidelity State Bank* v. *Central Surety and Ins. Corp., supra,* as follows:

> " . . . If transactions like those in this case are upheld, the holders of invalid receipts may make a claim against the bondsman of the warehouseman, and the protection sought to be given those who store grain in warehouses or purchase valid warehouse receipts, could be destroyed. The examining officials could not effectively inspect and balance the amount of grain held by the warehouseman against outstanding warehouse receipts or other evidences of title to grain issued by the warehouseman. It seems to us that the statutory provisions for obtaining a warehouseman's license and governing transactions relating to grain in storage, either as bailee or owner, were designed to prevent such transactions as occurred between the bank and the grain company and any one participating in such transactions is not entitled to the protection of the Act."

When this language was originally written, the Court of Appeals was apparently not informed of the procedure with respect to the issuance of unregistered warehouse receipts in the state of Kansas, but since, in the instant cause, the Court was so informed, its repetition of the language quoted in the light of this information is somewhat shocking. The record in this case discloses that unregistered receipts such as the ones here involved were always prepared in triplicate by the state printer, that the original was issued to the holder and purchaser, that one copy was retained by the warehouseman, and that the second copy was delivered to the chief inspector for the state of Kansas for the purpose of enabling him to check the status of the warehouseman's accounts. The assertion, therefore, that the "examining officials could not effectively inspect and balance the amount of grain" is entirely without foundation.

III

WHETHER NEGOTIABLE WAREHOUSE RECEIPTS ARE SUBJECT TO EXTRANEOUS DEFENSES IS A QUESTION VITAL TO THE CONDUCT OF BUSINESS.

The trend of the law for the past half century at least has been to expand and extend the negotiability and merchantability of various documents of title. This has been true, for example, of bills of lading. *Newhall, et al.* v. *Central Pacific Railway Co.*, 51 Cal. 345 (1876). It has certainly been true of warehouse receipts. See *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust Co., supra.* The reasons are, of course, obvious. Commerce carried on over vast distances and employing rapid means of communication would be severely handicapped, if not completely hamstrung, by the applica-

tion of obsolete rules limiting and circumscribing the negotiability of documents of title. It is estimated that hundreds of millions of dollars of business is conducted each year through the media of bills of lading and warehouse receipts. In the leading case of *Newhall, et al.* v. *Central Pacific Railway Co., supra,* the Supreme Court of California said with respect to bills of lading:

> "If a person, taking an assignment of a bill of lading, is to encounter these risks, and can take the assignment with safety only after he has inquired of the vendor, and of every carrier through whose hands the goods are to come, whether a notice of stoppage in transitu has been given, it is quite certain that prudent persons will cease to advance money on such securities, and a very important class of commercial transactions will be practically abrogated."

Similarly in *Peoples Warehouse Co.* v. *Commercial Bank and Trust Co., supra,* it was held that "the plaintiff had the right to presume that the law had been complied with, and when the plaintiff bought the uncanceled receipts in good faith, it had not, under the allegations of the petition, failed to exercise due care." And again in *Heffron* v. *Bank of America, supra,* the Court of Appeals said:

> "Indeed, the general scheme of the Warehouse Receipts Act to achieve uniformity, and to effect the secure and ready use of warehouse receipts as instruments of credit, is inconsistent with the notion that the business world must look to something other than the observance of the definite and comprehensive terms of the act itself."

To quote again from *Weil Bros., Inc.* v. *Keenan, supra,*

> "A primary purpose of the Uniform Warehouse Receipts Act is to make the standard receipts issued by warehousemen for chattels documents of title so that people who honestly purchase these documents for value will be protected by the terms of the Act as purchasers in good faith."

Indeed, every decision relevant to the question which the petitioner has been able to find has emphasized the rights of the holder of negotiable warehouse receipts as an innocent purchaser and has invariably permitted him to recover either against the warehouseman, the warehouseman's surety, or adverse claimants. The decision below is unique in that it shifts the burden of liability and responsibility from the warehouseman and his surety to the innocent holder of warehouse receipts. Its express ruling is that the petitioner "was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse." The fact, however, was that the petitioner did not know that its receipts had been issued for grain that was not in the warehouse. Indeed, grain was purchased with the petitioner's money and deposited in the warehouse. Had the petitioner had any inkling that there was no grain behind the receipts, its officers, as reasonable and rational men, would certainly not have paid more than $260,000.00 for the receipts delivered to them. In short, the Court of Appeals has held, in effect, that punishment for a wrongful act should be inflicted not upon the wrongdoer, but upon the victim. This holding is not only morally wrong, but it conflicts with the overwhelming weight of legal authority and it runs counter to the needs and practices of the business

community. If the decision below becomes the law, no man will be able to rely upon a negotiable warehouse receipt unless he first makes a personal inspection of the warehouse in which the commodity has been allegedly deposited. Such a requirement in our modern business world is not only impractical, but nothing short of fantastic.

CONCLUSION

For the foregoing reasons the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

General Statutes of Kansas, 1949

Sections Involved*

Section 34-223 (in part).

"*Definitions in part.* In this act, unless the context or subject matter otherwise requires: . . . 'Holder' of receipt means a person who has both actual possession of such receipt, and a right of property therein. . . . " [p. 1105]

Section 34-229.

"*Warehouseman bond.* Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000:

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* The page reference in brackets at the end of each quoted section refers to the page on which such section begins in Corrick's General Statutes of Kansas (Annotated) 1949.

Provided, that whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial condition, it shall be his duty to require a substituted or additional bond as he shall deem necessary." [p. 1105]

Section 34-238.

"*Persons who may issue receipts; printing of receipts; revenue to state treasurer.* Warehouse receipts may be issued by any licensed public warehouseman, as herein defined, and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act. All of the expense incurred shall be paid by the state grain inspection department out of the state grain inspection revolving fund, and he shall distribute such warehouse receipts printed to the licensed public warehouses at cost, and the revenue from such distribution shall be by said chief inspector remitted to the state treasurer and credited to the state grain inspection revolving fund in the same manner as other fees collected. It shall be unlawful for any public warehouseman to issue any warehouse receipts for any grain received except upon warehouse receipts furnished by the state grain inspection department on and after June 1, 1939: *Provided,* That nothing in this section shall be construed to affect the legality or validity of any receipt, or re-

ceipts, issued under authority of this act if the same contains all the provisions required by section 34-239 of the General Statutes of 1935, and issued before June 1, 1939." [p. 1108]

Section 34-239.

"*Form of receipt for storage grain.* Every receipt issued for grain stored in a warehouse licensed under this act shall embody within its written or printed terms: (a) The location of the warehouse where the grain is stored; (b) the statement whether the grain received will be delivered to bearer, to a specified person, or to a specified person or his order; (c) the date of the issuance of the receipt; (d) the rate of the storage charges or the basis for such charges; (e) the net weight and percentage of dockage, together with the grade; (f) the words, nonnegotiable, not negotiable, or negotiable, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (g) the signature of the warehouseman which may be made by his authorized agent; (h) if the receipt for grain of which the warehouseman is owner either wholly or jointly, or in common with others, the facts about such ownership; (i) a statement of the amount of the advances made or the liability incurred, for which the warehouseman claims a lien, but if the precise amount of such advances made, or of such liabilities incurred, be at the time of the issuance of the receipts unknown to the warehouseman, or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby for all damages caused by the omission from a negotiable receipt of any of the terms herein required." [p. 1108]

Section 34-240.

"*Warehouseman's receipt on own grain valid.* Any public warehouseman operating a warehouse in this state may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of such ownership in the receipts shall constitute notice to all the world of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by such receipts, provided that said receipts are registered according to the provisions of this act." [p. 1108]

Section 34-244.

"*Definition of negotiable receipt.* A receipt in which it is stated that the grain received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provision shall be inserted in a negotiable receipt that will make it non-negotiable. Such provisions, if inserted, shall be void." [p. 1109]

Section 34-246 (in part).

"*Issuance and cancellation of receipts; division and consolidation.* That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. . . . " [p. 1109]

Section 34-248.

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by

twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and showing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided,* That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further,* That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner, either solely, jointly or in common with others. And is [it] shall be unlawful for any grain warehouseman to limit or modify his responsibility imposed by law by any words inserted in any such receipt or by any contract relative thereto. Upon receipt of such report, as hereinafter provided, and warehouse receipts, it shall be the duty of the registrar of warehouse receipts to register such legal receipts in a book to be kept for that purpose and to stamp on each of such receipts with the official state grain inspection department registration stamp the word 'registered' with the date of registration and affix his signature thereto." [p. 1110]

Section 34-250.

"*Obligation of warehouseman to deliver.* A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the grain upon a demand made either by the holder of a receipt for the grain, or by the depositor, if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be neces-

sary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the grain is delivered, an acknowledgment that it has been delivered, if such acknowledgment is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the grain in compliance with the demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal." [p. 1110]

Section 34-290.

"*Issuance of receipt for grain not received; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who issues or aids in issuing a receipt knowing that the grain for which such receipt is issued has not been actually received by such warehouseman, or is not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by fine not exceeding $5,000, or both." [p. 1114]

Section 34-291.

"*Issuance of receipt containing false statement; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for grain, knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both." [p. 1114]

Section 82-120.

"*Nonexistence of goods or failure to correspond to description in receipt.* A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods

to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor." [p. 2729]

Section 82-157.

"*Construction of warehouse receipts act.* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [p. 2733]

Section 82-158 (in part).

"*Definition of terms.* (1) In this act, unless the context or subject matter otherwise requires, . . . 'holder' of a receipt means a person who has both actual possession of such receipt and a right of property therein; . . . " [p. 2733]

APPENDIX B

Opinion and Judgment of the Court of Appeals

1. OPINION

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 5403—September Term, 1956

CENTRAL STATES CORPORATION, *Appellant*,

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Appellee*.

Appeal from the United States District Court for the District of Kansas

Samuel Morgan (Kahrs & Nelson were with him on the brief) for appellant.

Gerrit H. Wormhoudt (Howard T. Pleeson, Homer V. Gooing, Wayne Coulson, Paul R. Kitch, Dale M. Stucky and Donald R. Newkirk were with him on the brief) for appellee.

Before BRATTON, Chief Judge, and PHILLIPS and LEWIS, Circuit Judges.

PHILLIPS, Circuit Judge.

On August 4, 1951, Trinity Universal Insurance Company[1] issued a State of Kansas Grain Public Warehouse Bond in the principal amount of $130,000, covering the operation by the Garden Grain and Seed Company[2] of grain elevators as public warehouses at Garden City, Kansas Air Base and Pierceville, Kansas. On October 30, 1951, the Insurance Company issued a like bond in the principal amount of $5,000, covering the operation by the Seed

[1] Hereinafter called the Insurance Company.

[2] Hereinafter called the Seed Company.

Company of an elevator as a public warehouse, at Ingalls, Kansas.

The Insurance Company brought an action of interpleader against Central States Corporation[3] and others who asserted claims against it under its bonds, asking a determination of its liabilities under the bonds to such claimants.

Central filed an answer in which it sought recovery on the $130,000 bond, on account of certain unregistered warehouse receipts issued to it by the Seed Company. In its answer Central alleged that on November 29, 1951, it purchased from the Seed Company 50,000 bushels of #2 milo at $2.35 cwt. and paid therefor the sum of $65,800 and that as a part of the same transaction the Seed Company on the same day issued to it ten unregistered public warehouse receipts, numbered 164 to 173, inclusive, in the form prescribed and authorized by the law of Kansas. Central further alleged that on December 15, 1951, it purchased from the Seed Company 50,000 bushels of #2 yellow milo at $2.46 cwt. and paid therefor the sum of $68,800, and that as a part of such transaction the Seed Company on the same day issued to Central ten unregistered public warehouse receipts, numbered 179 to 188, inclusive, in the form provided by the law of Kansas.

Such unregistered receipts recited that the Grain Company had received in storage from Central a designated number of bushels of milo, subject to the order of Central. Each of the receipts also contained the following recital:

> "The undersigned warehouseman is not the owner of the grain covered by this receipt, either solely, jointly or in common with others: * * * ."

Central further alleged that the amount paid by it to the Seed Company for milo represented by such receipts, after giving full credit for milo delivered to it by the Seed Com-

[3] Hereinafter called Central.

pany, is $220,875.71 and sought recovery on the $130,000 bond for the full amount thereof.

The trial court granted a summary judgment in favor of the Insurance Company. Central has appealed.

At the hearing on the motion for summary judgment Central filed an affidavit of defense. It attached to such affidavit a transcript of the testimony of A. P. Emrie, Chief Grain Inspector of the State of Kansas, given in the examination of the Seed Company, Bankrupt, in the bankruptcy proceedings, which showed that the Grain Inspector had authorized the Seed Company to issue unregistered receipts and furnished the forms for such receipts in triplicate, one copy to be delivered to the person taking the receipt, one copy to be retained by the Seed Company and one copy to be forwarded to the Grain Inspection Department for the State of Kansas. The receipts were sent to Central with sight draft attached and Central received the receipts when it honored the sight draft.

In its affidavit of defense Central averred:

> "D. That in each of the transactions between Central * * * and * * * Seed Company * * * the latter used the moneys paid by Central * * * to purchase milo; that in each instance the said milo so purchased was deposited in the warehouses of * * * Seed Company * * * ; that in each instance the said deposit was purported to be made for and on behalf of Central * * * ; that in each instance warehouse receipts were issued reciting that the grain so deposited had been 'received in store' 'from Central States Corp.'; that each of the warehouse receipts so issued to Central * * * was on an official form prescribed and printed by the State of Kansas, each purported to be negotiable, and each bore the caption, 'Uniform Unregistered Bailment Local Public Warehouse Receipt'; that as Central * * * required grain for its distilling operations, it would draw upon the deposits of milo evidenced by its said warehouse receipts; that storage charges were paid by Central * * * on all grain not so withdrawn by it; that at no time was Central * * * aware that

milo had not been deposited for and on its behalf by * * * Seed Company, in the amounts specified in the said warehouse receipts; that in all its transactions with * * * Seed Company, Central * * * acted in good faith and without knowledge of any dereliction on the part of * * * Seed Company."

Thus, it will be seen that in its answer Central alleged that it purchased milo from the Seed Company and received unregistered receipts therefor, while in its affidavit of defense Central averred that it furnished money to the Seed Company, with which the Seed Company was thereafter to purchase milo, while the receipts were issued at the time the money was furnished.

The Seed Company did not have milo in storage for which it issued receipts to Central and after it received the money from Central it did not thereafter purchase milo and place it in the warehouse to the credit of Central.

Section 34-248, General Statutes of Kansas Annotated, 1949, provides in part:

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and showing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided*, That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further*, That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner, either solely, jointly or in common with others. * * * "

Section 34-246, General Statutes of Kansas Annotated, 1949, provides in part:

> " • • • That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. • • • "

Section 34-290, General Statutes of Kansas Annotated, 1949, makes it a criminal offense for any warehouseman to issue or aid in the issuance of a warehouse receipt, knowing that the grain for which such receipt is issued has not been actually received by such warehouseman or is not under his actual control at the time of the issuance of such receipt.

Section 34-291, General Statutes of Kansas Annotated, 1949, makes it a criminal offense for a warehouseman or any officer, agent or servant of a warehouseman fraudulently to issue a receipt for grain, knowing that it contains a false statement.

Central did not deliver any grain to the Seed Company at the time it received the unregistered receipts and honord the sight drafts attached thereto, or at any other time; the Seed Company issued unregistered receipts to Central for grain which it did not actually have in storage; and Central knew those facts at the time it received the receipts and honored the sight drafts.

Central States Corporation v. Luther, 10 Cir., 215 F. 2d 38, was an action brought by Central for the possession of grain and funds in the possession of the trustee in bankruptcy for the Grain Company, predicated on the receipts involved in the instant case.

In its opinion the court said, at page 42:

> " • • • It will be observed with poignant significance that the pertinent language contained in the act in respect to receipts not being issued unless the grain has been actually deposited with the warehouseman and is under his control as well as the language in re-

spect to receipts issued for grain of which the warehouseman is the owner being registered, is not directory or permissive. Such provisions in the act are unequivocal, mandatory, and imperative. And they represent the considered public policy of the state in respect to the matters falling within their compass."

The court held that since Central did not deliver any grain to the bankrupt for storage and no physical deposit of grain was ever made, the receipts were invalid.

Fidelity State Bank v. Central Surety & Ins. Corp., 10 Cir., 228 F. 2d 654, was an action brought by the Insurance Corporation for determination of its liability under warehouseman's bonds covering the operations of the Seed Company as a public warehouseman under the provisions of Chapter 34 of the General Statutes of Kansas, Annotated, 1949. In that case the Fidelity Bank loaned the Seed Company $45,000, evidenced by its note for that amount, secured by three public warehouse receipts, each covering 9,000 bushels of wheat. The receipts recited that the warehouseman had received the wheat in storage, subject to the order of the bank, upon payment of charges and surrender of the receipts. They contained a statement that the warehouseman was not the owner of the grain. The bank had never delivered any grain to the warehouseman. The receipts were not the kind of receipts authorized to be issued for grain stored in the warehouse and owned by the warehouseman. The bank contended that the Seed Company, as a public warehouseman, violated its duty as a public warehouseman in issuing the receipts and thereby failed to faithfully perform all of its duties as a public warehouseman, in violation of the condition of the bond.

In affirming the judgment below, which denied recovery, the court, in its opinion said, at pages 656, 657:

"The bank deposited no grain in the elevator for storage, and the receipts which it accepted could relate only to grain which the bankrupt represented that it owned. A warehouseman may under Section 34-240

pledge his grain through the medium of warehouse receipts. He may do this, however, only by a strict compliance with the statute. He must strictly follow the requirements of the statute as to registration of the receipts. One who accepts receipts from the warehouseman which have been issued contrary to the statutory requirements, may not be heard to say that he had no notice that there was no compliance with the provisions of the Act. If the receipt is for grain purportedly owned by the warehouseman, the person who accepts it is bound to know that it must recite that the warehouseman is the owner, either solely or jointly or in common with others, and he must be held to know that the receipt which he accepts is registered or unregistered. • • •

• • • • •

" • • • If transactions like those in this case are upheld, the holders of invalid receipts may make a claim against the bondsman of the warehouseman, and the protection sought to be given those who store grain in warehouses or purchase valid warehouse receipts, could be destroyed. The examining officials could not effectively inspect and balance the amount of grain held by the warehouseman against outstanding warehouse receipts or other evidences of title to grain issued by the warehouseman. It seems to us that the statutory provisions for obtaining a warehouseman's license and governing transactions relating to grain in storage, either as bailee or owner, were designed to prevent such transactions as occurred between the bank and the grain company and any one participating in such transactions is not entitled to the protection of the Act."

Here, Central was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse and that they were, therefore, issued contrary to law and were invalid.

We conclude that Central was not entitled to recover on the bond and, accordingly, the judgment is affirmed.

2. Judgment

Eighteenth Day, September Term, Saturday, October 6th, 1956.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable Orie L. Phillips and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Kansas and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

FILED
FEB 2 1957
JOHN T. FEY, Clerk

BRIEF FOR RESPONDENT IN OPPOSITION.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 671.

CENTRAL-STATES CORPORATION, *Petitioner,*

vs.

TRINITY UNIVERSAL INSURANCE COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

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INDEX

Opinions Below 1
Jurisdiction 2
Question Presented 2
Statutes Involved 2
Statement of the Case 2

Argument—

I. The Decision Below Is Clearly Correct 5

A. The Court Below Correctly Determined the Validity of Petitioner's Warehouse Receipts Pursuant to the Statutory Provisions Specifically Governing Grain Warehousing Transactions in Kansas 5

B. The Court Below Properly Ruled That Petitioner Could Not Claim the Protection Afforded by the Kansas Grain Warehousing Act 7

II. There Is No Important Question of Federal Law Involved 11

Conclusion 13

Appendix 14

CITATIONS

Cases:

Central States Corp. v. Luther, 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438 ..... 2, 3, 5

Commercial National Bank of New Orleans v. Canal-Louisiana Bank and Trust, 239 U. S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916) 11

Erie Railroad Company v. Tompkins, 304 U. S. 64, 82 L. Ed. 1188 12

Fidelity State Bank v. Central Surety & Ins. Corp., 228 F. 2d 654 (C. A. 10, 1955) 3, 5
First National Bank in Wichita v. Luther, 217 F. 2d 262 (C. A. 10, 1954) 3
Inter-State National Bank of Kansas City v. Luther, 221 F. 2d 382 (C. A. 10, 1955), cert. granted 350 U. S. 810, 100 L. Ed. 726, 76 S. Ct. 77, dismissed 350 U. S. 944, 100 L. Ed. 823, 76 S. Ct. 297 3
Kipp v. Goffe & Carkener, 114 Kan. 95, 58 P. 2d 102 (1936) 6, 9
Luther v. United States, 225 F. 2d 495 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321 3
Shugar v. Antrim, 177 Kan. 70, 276 P. 2d 327 7
United States v. Luther, 225 F. 2d 499 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321 3

Statutes:

General Statutes of Kansas, 1949—

Section 34-220 4
Section 34-229 ..... 2, 14
Section 34-238 ..... 2, 15
Section 34-239 ..... 2, 15
Section 34-240 ..... 2, 4, 8, 16
Section 34-246 (in part) 2, 4, 8, 17
Section 34-247 ..... 2, 17
Section 34-248 ..... 2, 4, 8, 17
Section 34-291 ..... 2, 18
Section 34-293 ..... 2, 8, 18

Laws of Kansas, 1955, Chapter 233, G. S., 1955 Supp., Chapter 34, Articles 1, 2 10

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BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

Judgment was entered by the United States District Court for the District of Kansas without opinion. The opinion of the Circuit Court of Appeals for the Tenth Circuit is reported at 237 F. 2d 875 (Advance Sheets), and is included in the Appendix to the Petition.

JURISDICTION.

The jurisdiction requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Whether the Court below correctly applied the law of the State of Kansas in determining the validity of certain warehouse receipts obtained by the petitioner from a grain warehouseman licensed and operating under the laws of Kansas.

STATUTES INVOLVED.

The pertinent statutory provisions of the General Statutes of Kansas, 1949 (hereinafter referred to as "G. S. Kan., 1949"), are Sections 34-229, 34-238, 34-239, 34-240, 34-246, 34-247, 34-248, 34-291 and 34-293. These sections are printed as an Appendix to this brief (pp. 14-19).

STATEMENT OF THE CASE.

This is the second time that this petitioner has requested this Court to review a decision of the Court below holding that certain grain warehouse receipts obtained by petitioner were invalid under the laws of Kansas. See *Central States Corp.* v. *Luther*, 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438. Prior to its decision in the instant case, the Court of Appeals for the Tenth Circuit decided six other appeals, including the prior appeal by petitioner, arising out of the bankruptcy of the issuing warehouseman, the Garden Grain & Seed

Company, Inc., of Garden City, Kansas (See *Central States Corp.* v. *Luther,* 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438; *Inter-State National Bank of Kansas City* v. *Luther,* 221 F. 2d 382 (C. A. 10, 1955), cert. granted, 350 U. S. 810, 100 L. Ed. 726, 76 S. Ct. 77, dismissed 350 U. S. 944, 100 L. Ed. 823, 76 S. Ct. 297; *First National Bank in Wichita* v. *Luther,* 217 F. 2d 262 (C. A. 10, 1954); *United States* v. *Luther,* 225 F. 2d 499 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321; *Luther* v. *United States,* 225 F. 2d 495 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321; *Fidelity State Bank* v. *Central Surety & Ins. Corp.,* 228 F. 2d 654 (C. A. 10, 1955)). In the statement of facts contained in the Petition mention is made of dissents filed in two of the cases and of the fact that certiorari was granted in one of them (Petition, p. 8). But petitioner does not inform the Court that the dissenting judge in petitioner's bankruptcy appeal concurred in the majority holding that petitioner's warehouse receipts were invalid under Kansas law, and that the dissents in the Inter-State Bank case were confined to the power of the bankruptcy court to adjudicate two unlawful preferences, 215 F. 2d 38, at p. 46, and 221 F. 2d 392, at p. 397. Nor does the petitioner disclose that the Petition for Writ of Certiorari of the Inter-State Bank, which was granted and then dismissed, did not seek review of that part of lower court's decision concerning the validity of its warehouse receipts. See Petition for Writ of Certiorari, October Term, 1955, No. 242. On the other hand, the petitioner in the instant case did seek review of the ruling on the validity of its warehouse receipts in its former petition, which was denied. See Petition for Writ of Certiorari, October Term, 1954, No. 514.

The warehouse receipts accepted by petitioner, copies of which were attached to petitioner's answer (R. 27), were

held invalid in the bankruptcy proceedings and in the instant proceeding because they were issued and accepted in violation of the comprehensive enactments of Kansas governing the licensing and operation of grain warehousemen. G. S. Kan., 1949, 34-220, *et seq.* The Kansas Grain Warehousing Act prohibits the issue of any receipt except upon grain delivered into store. G. S. Kan., 34-246, Appendix, p. 17. The Act provides that all receipts issued by a warehouseman operating under the Act must first be registered with a Registrar of Receipts, provided that the Chief Grain Inspector may authorize the use of unregistered receipts for grain *not* owned by the warehouseman. G. S. Kan., 1949, 34-248, Appendix, p. 17. The Registrar of Receipts, after recording registered receipts, stamps them with the official department stamp bearing the word "registered," and affixes his signature thereto and the date of registration. G. S. Kan., 1949, 34-248, Appendix, p. 17. Every receipt for the warehouseman's own grain must be registered, and any sale or pledge of the warehouseman's own grain through the medium of warehouse receipts, to be valid, must be of registered receipts. G. S. Kan., 1949, 34-240 and 34-248, Appendix, pp. 16-17.

The receipts attached to petitioner's answer in respondent's interpleader action showed on their face that they were unregistered, and it is admitted that the receipts falsely recited that the petitioner had deposited the amount of grain stated thereon with the warehouseman (R. 27-29, 24-25, 35, 46). At the time the receipts were issued to the petitioner the warehouseman owned no grain of its own for which receipts could be issued (R. 34).

On petitioner's bankruptcy appeal it was held that petitioner was charged with knowledge as a matter of law that its warehouse receipts were illegally issued, and that

accordingly, petitioner could not participate with actual depositors of grain in the grain fund held by the trustee in bankruptcy. *Central States Corp.* v. *Luther*, 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438. This holding was followed in a companion interpleader action filed by a prior statutory bondsman for the bankrupt (*Fidelity State Bank* v. *Central Surety & Ins. Corp.*, 228 F. 2d 654 (C. A. 10, 1955)), and was again applied in the instant action in the nature of interpleader filed by respondent for the purpose of determining its liability to the numerous creditors of the bankrupt.

ARGUMENT.

I.

The Decision Below Is Clearly Correct.

A. The Court Below Correctly Determined the Validity of Petitioner's Warehouse Receipts Pursuant to the Statutory Provisions Specifically Governing Grain Warehousing Transactions in Kansas.

The Court below, in deciding the petitioner's bankruptcy claim and its claim in this appeal, was faced with the question of determining whether, under Kansas law, petitioner could claim the protection of that law so as to enable it to participate with depositors of grain in the grain fund acquired by the trustee in bankruptcy or in the proceeds of the statutory bond executed by this respondent.

Determination of the applicable Kansas law was simple. Although Kansas enacted the Uniform Warehouse Receipts Act in 1909 to govern warehouse transactions generally, it has enacted separate and special provisions comprehensively regulating the warehousing of grain because of the importance of that particular industry in the State. The

history of Kansas grain warehousing legislation is discussed at length by the Supreme Court of Kansas in *Kipp* v. *Goffe & Carkener*, 144 Kan. 95, 58 P. 2d 102 (1936). After reviewing prior grain warehousing legislation, the Court dismisses general warehousing acts as irrelevant to grain transactions:

> "In our Revised Statutes of 1923 all our statutes then in force specifically relating to the inspection, handling and storing of grain in public warehouses were collected in chapter 34, article 1 of which contained the sections relating to inspection, and article 2 those specifically relating to the storage of grain in public warehouses. In 1931 article 2 of chapter 34 of the Revised Statutes of 1923 was revised generally (Laws 1931, ch. 194).
>
> "In the meantime several acts pertaining to warehouses generally had been enacted containing some provisions applicable to the storage of grain. For example, see chapter 224 of the Laws of 1905, amended by chapter 186 of the Laws of 1911. *Our legislature also enacted the 'warehouse receipts act,' which had been drafted by the commission on uniform laws (Laws 1909, ch. 262), and supplemented that by a later act (Laws 1927, ch. 340), which specifically provided (Sec. 11) that it shall not be construed as in any way affecting, altering, or amending chapter 34 of our Revised Statutes of 1923.* So, while these general warehouse acts appear to overlap some of the sections of our statutes hereinbefore referred to relating to the inspection, handling and storage of grain, the legislature has kept them fairly well segregated.
>
> "Chapter 194 of the Laws of 1931, R. S., 1933 Supp., 34-223 *et seq.*, was in force during the time of the transactions involved in this action, and we regard it as being the statute necessary to be considered in connection with the evidence in this case in determining whether plaintiff stored or sold his wheat to Dillon.

> As we have seen, this is the latest revision of a series of statutes beginning in 1891 by which the state, in the public interest, has undertaken to regulate the inspection, grading, weighing, handling and storage of grain, including public warehouses therefor—what constitutes such warehouses, under what conditions they may be operated, the issuance and keeping a record of warehouse receipts, and the rights and duties of the respective interested parties in relation thereto." (Italics ours) (144 Kan. 95, at 102-103, 58 P. 2d 102, at 106-107).

The Kipp case was cited with approval in a recent Kansas decision handed down shortly after the Court below decided the petitioner's bankruptcy appeal. *Shugar* v. *Antrim*, 177 Kan. 70, at 74, 276 P. 2d 327, at 375.

In view of the lengthy history of special grain warehousing legislation in Kansas and in the light of the foregoing decision by the highest court of that State holding that grain transactions are governed by the special warehousing laws pertaining to the storage of grain, we can offer no explanation for petitioner's insistence that the Court below should have applied the provisions of the Uniform Warehouse Receipts Act to its grain receipts. Petitioner may choose to ignore the existence of the special grain warehousing statutes of Kansas and the decisions of the Kansas Supreme Court on the subject, as it does in its Petition, but the Court below was required to heed them, and did so.

B. The Court Below Properly Ruled That Petitioner Could Not Claim the Protection Afforded by the Kansas Grain Warehousing Act.

Petitioner accepted unregistered warehouse receipts which falsely recited that the grain stated thereon had been "Received in store * * * from Central States Corp." as "De-

positor and Bailor." (R. 27, 46). The receipts also stated that the warehouseman was not the owner of the grain, in whole or in part (R. 27). The Kansas Grain Warehousing Act specifically provides "That no warehouse receipt shall be issued except upon actual delivery of grain into store * * *." G. S. Kan., 1949, 34-246, Appendix, p. 17. The act further provides that the warehouseman's own grain can only be sold through the medium of warehouse receipts after such receipts have first been registered, and it is a criminal offense for anyone to issue receipts for the warehouseman's own grain on forms which do not indicate the warehouseman's ownership. G. S. Kan., 1949, 34-293, Appendix, p. 18.

The petitioner cannot escape its dilemma. If it stands on its own receipts, it must admit that the receipts falsely recite that petitioner deposited grain, and that the receipts were issued in violation of Sec. 34-246 of the Act. If it claims that it bought the warehouseman's grain through warehouse receipts, then it must admit that the receipts were unregistered and fail to state the interest of the warehouseman in the grain, all in violation of G. S. Kan., 1949, 34-240, 34-248, 34-293, Appendix, pp. 16, 17, 18. Petitioner's receipts would have been valid if petitioner had actually deposited grain, as the receipts so state (R. 27). Or, petitioner could have validly purchased grain from the warehouseman by a transfer of registered receipts which would have shown the interest of the warehouseman. The failure of the petitioner to do either helped make it impossible for the Kansas Grain Inspection Department to be informed of the warehouseman's defalcations. The provisions of the Act designed to make a warehouseman divulge his own dealings in grain by registration of receipts for his own grain are rendered meaningless if the warehouseman is allowed to issue, and anyone accepts, receipts which falsely

recite that the depositor has stored grain with the warehouseman.

The Kansas Supreme Court has made it unmistakably plain that anyone claiming the benefits of the Act must show compliance with its terms. In *Kipp* v. *Goffe & Carkener,* 144 Kan. 95, 58 P. 2d 102, the plaintiff stored grain with a warehouseman, one Dillon, who was not licensed under the Kansas Grain Warehousing Act. The defendant purchased the grain from the warehouseman and the plaintiff sought to recover from the defendant as a converter of the plaintiff's grain. The Court held that the action would not lie because Dillon, the warehouseman, had no authority to store grain and the plaintiff was charged with knowledge of such want of authority as a matter of law.

> "A similar question was before the Louisiana supreme court recently in *Supervisor of Public Accounts* v. *Patorno W. & D. Corp.,* 181 La. 814, 160 So. 423, where the court had to construe a statute much like the one before us, except that it pertained to the storage of goods, chattels, merchandise and crude petroleum. It defined a public warehouseman as one 'lawfully' engaged in storing such goods, and as a condition precedent to his doing such business, required him to make application, give bond, and procure a license. He had done this and had procured a license to operate a public warehouse at a specified location. He stored wines at another location and issued a warehouse receipt therefor. The court held the warehouse receipt to be void because of lack of power or authority of the warehouseman to issue it. Generally, it is held that warehouse receipts are invalid when issued by one who had no right or authority to issue such receipts."

* * *

"Appellee argues that his rights are not affected even if Dillon were guilty under the penal provisions of the statute (Laws 1931, ch. 194, sec. 9). Perhaps if Dillion were guilty plaintiff also was guilty as an aider or abettor." (144 Kan. 95, at 104-105, 58 P. 2d 102, at 108).

"The evidence discloses Dillon knew he had never complied with the law, and that he was not doing business as a local public warehouseman. Plaintiff, dealing with Dillon, was bound also to know that fact, for the reason that he is bound generally to know the law of the state, and furthermore, had it been a public warehouse the license therefor would have been posted in a conspicuous place in the office room of the elevator. Hence, both of the parties knew that Dillon had no right, power, or authority as a public warehouseman to receive grain for storage or transfer for the public." (144 Kan. 95, at 106, 58 P. 2d 102, at 109).

"The statute (Laws 1931, ch. 194) is designed to be a beneficial one. Had Dillon complied with it he could have received plaintiff's grain for storage, and plaintiff would have been protected not alone by Dillon's financial ability but by his bond. The benefits of the statute will result from complying with it; not by ignoring it and rendering it nugatory. Plaintiff could not so deal with Dillon as to aid and abet him in violating it and then reap all the benefits he could have obtained if the statute had been complied with." (144 Kan. 95, at 107-108, 58 P. 2d 102, at 109-110).

Implicit legislative approval of the Kipp decision and of the decision of the Courts below on petitioner's bankruptcy claim is found in the subsequent legislative revision of the Kansas Grain Warehousing Act. Laws of Kansas, 1955, Chapter 233, G. S., 1955 Supp., Chapter 34, Articles 1, 2. The amendments are confined to changes

in the State Grain Inspection Department, procedure for licensing and bonding of grain warehousemen, storage charges and criminal offenses. No attempt has been made to modify the ruling of the Kipp case and of the Courts below that anyone transacting business with a warehouseman subject to the provisions of the Act is charged with knowledge of its terms as a matter of law and must show compliance with the Act before invoking its protection.

In petitioner's bankruptcy appeal and in the instant case, the Courts below correctly ruled that, under the governing Kansas legislation, as construed by the highest Court of that State, petitioner's warehouse receipts were invalid and would not permit petitioner to claim the protection of the Act. The Kipp case fairly encompassed every issue here presented and presented below, and those issues were all resolved against petitioner by the Kansas court. The decision of that Court was merely applied by the Court below, which was bound to do so.

II.

There Is No Important Question of Federal Law Involved.

The questions presented by petitioner imply that a federal question is here involved (Petition, p. 2). Complaint is made of the failure of the Court below to apply the Uniform Warehouse Receipts Act in the instant case, and a decision of this Court expressing the purposes of the Uniform Act is quoted (Petition, pp. 8-9, citing *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust*, 239 U. S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916). But, in view of petitioner's failure to discuss the Kansas decisions holding that grain warehousing transactions are governed by other legislation in Kansas, we believe it apparent that petitioner has misconceived the obligations of

a federal court in this situation. While petitioner may personally question the wisdom of the particular method adopted by the Kansas legislature for the issuance of grain warehouse receipts and the logic of the decisions of Kansas Courts in construing the legislative enactments, it cannot expect the federal courts to do other than follow state law, unless it conflicts with federal power.

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts." (*Erie Railroad Company* v. *Tompkins*, 304 U. S. 64, 78, 82 L. Ed. 1188, 1194).

No hint of collision between state and federal power can be found in this action. All that was involved below was the application of unique Kansas law to transactions occurring in Kansas. The questions raised by petitioner concerning the validity of its warehouse receipts and the obligations imposed upon it under Kansas law have all been answered adversely to petitioner by Kansas authorities, to which the Courts below consistently and unanimously adhered. No matter how highly they are magnified here, the questions resolved below, confined to Kansas grain warehousing transactions, cannot be transformed into federal problems.

CONCLUSION.

The decision below correctly applied Kansas law specifically governing the Kansas transactions involved. The questions presented do not warrant review by this Court.

For the foregoing reasons we respectfully submit that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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DALE M. STUCKY,
901 First National Bank Building,
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Counsel for Respondent.

Date _____

APPENDIX.

General Statutes of Kansas, 1949.

Section 34-229.

"*Warehouseman bond.* Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000: *Provided*, that whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial con-

dition, it shall be his duty to require a substituted or additional bond as he shall deem necessary [L. 1931, ch. 194, Sec. 7; July 1]."

Section 34-238.

"*Persons who may issue receipts; printing of receipts; revenue to state treasurer.* Warehouse receipts may be issued by any licensed public warehouseman, as herein defined, and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act. All of the expense incurred shall be paid by the state grain inspection department out of the state grain inspection revolving fund, and he shall distribute such warehouse receipts printed to the licensed public warehouses at cost, and the revenue from such distribution shall be by said chief inspector remitted to the state treasurer and credited to the state grain inspection revolving fund in the same manner as other fees collected. It shall be unlawful for any public warehouseman to issue any warehouse receipts for any grain received except upon warehouse receipts furnished by the state grain inspection department on and after June 1, 1939: *Provided*, That nothing in this section shall be construed to affect the legality or validity of any receipt, or receipts, issued under authority of this act if the same contains all the provisions required by section 34-239 of the General Statutes of 1935, and issued before June 1, 1939 [L. 1931, ch. 194, sec. 16; L. 1939, ch. 197, sec. 1; April 3]."

Section 34-239.

"*Form of receipt for storage grain.* Every receipt issued for grain stored in a warehouse licensed under this act shall embody within its written or

printed terms: (a) The location of the warehouse where the grain is stored; (b) the statement whether the grain received will be delivered to bearer, to a specified person, or to a specified person or his order; (c) the date of the issuance of the receipt; (d) the rate of the storage charges or the basis for such charges; (e) the net weight and percentage of dockage, together with the grade; (f) the words, nonnegotiable, not negotiable, or negotiable, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (g) the signature of the warehouseman which may be made by his authorized agent; (h) if the receipt for grain of which the warehouseman is owner either wholly or jointly, or in common with others, the facts about such ownership; (i) a statement of the amount of the advances made or the liability incurred, for which the warehouseman claims a lien, but if the precise amount of such advances made, or of such liabilities incurred, be at the time of the issuance of the receipts unknown to the warehouseman, or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby for all damages caused by the omission from a negotiable receipt of any of the terms herein required [L. 1931, ch. 194, sec. 17; July 1]."

Section 34-240.

"*Warehouseman's receipt on own grain valid.* Any public warehouseman operating a warehouse in this state may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of such ownership in the receipts shall constitute notice to all the world of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by such

receipts, provided that said receipts are registered according to the provisions of this act [L. 1931, ch. 194, sec. 18; July 1]."

Section 34-246 (in part).

"*Issuance and cancellation of receipts; division and consolidation.* That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued * * * [L. 1931, ch. 194, sec. 24; L. 1939, ch. 197, sec. 3; April 3]."

Section 34.247.

"*Appointment of registrar; bond.* The chief inspector may appoint some person, or persons, as registrar of receipts, who shall execute a corporate surety bond to the state of Kansas in the penal sum of $5,000, the sureties to be approved by the chief inspector, conditioned that he well and faithfully discharge all his duties as such registrar of receipts according to law and truly account for and turn over to his successor all moneys, books, files and papers that may come in his hands as such registrar and that he pay all loss and damage that may be sustained by any person or persons by reason of his neglect, failure, or refusal to properly perform the duties of his said office [L. 1931, ch. 194, sec. 25; L. 1939, ch. 197, sec. 4; April 3]."

Section 34-248.

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and show-

ing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided*, That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further*, That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner either solely, jointly or in common with others. And is [it] shall be unlawful for any grain warehouseman to limit or modify his responsibility imposed by law by any words inserted in any such receipt or by any contract relative thereto. Upon receipt of such report, as hereinafter provided, and warehouse receipts, it shall be the duty of the registrar of warehouse receipts to register such legal receipts in a book to be kept for that purpose and to stamp on each of such receipts with the official state grain inspection department registration stamp the word 'registered' with the date of registration and affix his signature thereto [L. 1931, ch. 194, sec. 26; L. 1939, ch. 197, sec. 5; April 3]."

Section 34-291.

"*Issuance of receipt containing false statement; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for grain, knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both [L. 1931, ch. 194, Sec. 69; July 1]."

Section 34-293.

"*Issuance of receipts for warehouseman's grain which does not state that fact; penalty.* Where there

is deposited with or held by a warehouseman grain of which he is the owner, either solely or jointly, or in common with others, such warehouseman or any of his officers, agents or servants who knowing this ownership issues or aids in issuing a negotiable receipt for such grain which does not state such ownership[,] shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both [L. 1931, ch. 194, sec. 71; July 1]."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 671

CENTRAL-STATES CORPORATION, *Petitioner*

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

KIPP v. GOFFE & CARKENER, 144 Kan. 95, 58 P. (2d) 102 (1936), DOES NOT HOLD THAT THE UNIFORM WAREHOUSE RECEIPTS ACT (CHAPTER 82, KANSAS GENERAL STATUTES, 1949), AND IN PARTICULAR, SECTION 82-120 THEREOF, IS INAPPLICABLE TO GRAIN TRANSACTIONS. SECTION 82-120 DOES CONTROL THE QUESTION HERE IN CONTROVERSY.

Section 82-120 provides that:

> "A warehouseman shall be liable *to the holder of a receipt* for damages caused by the non-

existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue." (Italics supplied.)

As pointed out in Part I.A. of the Petition's Reasons for Granting Writ, every court which has had occasion to consider the problem has ruled that the language quoted authorized recovery against a warehouseman's surety on receipts issued for non-existent goods.

The trial court, however, was apparently of the conviction, and it is the respondent's contention herein, that all the provisions of the Uniform Warehouse Receipts Act, including Section 82-120, were declared to be inapplicable to grain transactions by the Supreme Court of Kansas in *Kipp* v. *Goffe & Carkener*, 144 Kan. 95, 58 P. (2d) 102 (1936). This view is founded upon the following excerpt from that decision, quoted by the respondent on page 6 of its brief:

"Our legislature also enacted the 'warehouse receipts act', which had been drafted by the Commission on uniform laws (Laws 1909, ch. 262), *and supplemented that by a later Act* (Laws 1927, ch. 340), *which specifically provided* (Sec. 11) *that it shall not be construed as in any way affecting, altering, or amending chapter 34 of our Revised Statutes of 1923.* So, while these general warehouse acts appear to overlap some of the sections of our statutes hereinbefore referred to relating to the inspection, handling, and storage of grain, the Legislature has kept them fairly well segregated.

"Chapter 194 of the Laws of 1931, R.S., 1933 Supp., 34-223, *et seq.*, was in force during the time

> of the transactions involved in this action, and we regard it as being the statute necessary to be considered in connection with the evidence in this case in determining whether plaintiff stored or sold his wheat to Dillon." (Italics supplied.)

Now it should be self-evident, even to a cursory reader, that "fairly well segregated" is not synonymous with "completely segregated." But when one analyzes the excerpt set forth above and particularly the words in italics one cannot but feel shocked at the manner in which black has been proclaimed to be white.

The statute referred to in the italicized words is Kan. G.S., Sections 82-161 to 82-171, which was enacted in 1927. Section 82-120 first became law in 1909. Section 82-171 (which is the Section 11 referred to above) is reproduced as follows in the Kansas statute book:

> "CONSTRUCTION OF §§ 82-161 TO 82-171. This act shall not be construed as in any way affecting, altering or amending chapter 34, *or of article 1 [82-101 to 82-160] of Chapter 82, Revised Statutes of Kansas for 1923.*" (Italics supplied.)

The *non-italicized* portion of Section 82-171, above, was referred to in the quotation from the *Kipp* case. The *italicized* portion was not mentioned for the very excellent reason that it had no relevance to the question then before the Kansas Supreme Court. Sections 82-161 to 82-171 relate to the bonding and licensing of warehousemen. This field, in the case of grain warehousemen, had been completely covered by chapter 34, and the Kansas Supreme Court so expressly held in a case involving primarily the

construction to be given to a transaction with an unlicensed warehouseman. As to all other matters falling within the scope of Sections 82-101 to 82-160, the legislature of the State of Kansas intended and declared them to be unaffected in any way by Sections 82-161 to 82-171. In other words, Section 82-120 continued to be the law pertinent to all cases involving the issuance of warehouse receipts for non-existent goods. Surely no other interpretation can be given to Section 82-171, *which explicitly states that nothing therein contained shall affect, alter, or amend Sections 82-101 to 82-160.*

Certainly Sections 82-101 to 82-160 were not enacted merely as an exercise in rhetoric. They were obviously meant to accomplish some purpose, and, although no Kansas case is to be found on the subject, at least three other States have held that statutes identical with Section 82-120 warranted recovery against a warehouseman's surety on receipts issued for non-existent goods. The contention that the *Kipp* case dictates a contrary result requires a reading of that decision entirely out of context and is based upon the unwarranted assumption that Kansas law in the field of warehouse receipts is somehow unique. Section 82-120 is not only the law of Kansas but of most, if not all, of the States of the Union. In construing it, this Honorable Court has said:

> " * * * in order to accomplish the beneficient object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an offshoot of local law." *Commercial National Bank of*

New Orleans v. *Canal-Louisiana Bank and Trust Company,* 239 U.S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916).

It is significant that before the above facts were called to the attention of the Court of Appeals it adopted respondent's construction of the *Kipp* case. *Central-States Corp.* v. *Luther,* 215 F.(2d) 38 (C.A. 10, 1954). In the instant cause, however, after the provisions of Section 82-171 were analyzed and discussed, the Court of Appeals made no further reference to the *Kipp* case.

Respectfully submitted,

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